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Notice of Inquiry)

Metering, Billing and Information Services and) D.T.E. 00-41

Distribution Company Franchises)

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JOINT COMMENTS OF THE NSTAR COMPANIES IN RESPONSE TO NOTICE OF INQUIRY REGARDING
COMPETITIVE METERING, BILLING AND INFORMATION SERVICES AND EXCLUSIVITY OF
DISTRIBUTION COMPANY FRANCHISES

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EXECUTIVE SUMMARY

Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (the "NSTAR Companies") file these Initial Comments responding to the Department of Telecommunications and Energy's (the "Department") Notice of Inquiry ("NOI") regarding competitive metering, billing and information services ("MBIS") and the exclusivity of distribution company service territories. The Department's inquiry into these issues was mandated by the Legislature in Section 312 of the Electric Restructuring Act of 1997 (the "Act"), which requires the Department to determine whether the unbundling of MBIS will cause "substantive savings" to accrue

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to customers and whether such savings can be effected with little or no disruptions to distribution company employee staffing levels.

Accordingly, a key determination that the Department must make in this proceeding is whether the introduction of competition to these essential components of distribution service will increase the efficiency of such services, and therefore, ultimately produce cost savings for customers. The NSTAR Companies have attached to their comments quantitative data showing that the cost characteristics of providing distribution service, including MBIS, have the attributes of a natural monopoly, i.e., the continued realization of economies of scale and scope make it more efficient to furnish such services through a single provider in each service territory than to permit multiple providers to supply the service on a competitive basis. A study prepared by the Pacific Economics Group confirms the presence of economies of scale and scope and supports the conclusion that the unbundling of MBIS will not lower the average cost of MBIS, but instead would put upward pressure on rates by eliminating efficiencies. This result is at odds with public-policy and regulatory objectives, which are designed to ensure that utility services are offered to customers at the lowest possible cost, consistent with high service quality and reliability.

In addition to evaluating the potential for "substantive savings," the Department must determine whether any such cost savings would be achievable without impairing the utility's ability to fulfill its service obligation as "supplier of last resort" and to provide cost-effective, safe and reliable service to customers. The fulfillment of this obligation is largely dependent upon the ongoing communication and personal contact that a distribution company has with customers regarding their service requirements. In fact, MBIS functions are core elements of the commercial relationship between a utility and its customer, without which the utility cannot adequately meet consumers' expectations and requirements. As discussed herein, the unbundling of MBIS would inevitably erode the interaction between the utility and its customers, and therefore, undermine its ability to provide customers with effective and responsive service. Most importantly, in the absence of clear customer benefits and continued quality of service, the unbundling of MBIS can serve only to cause employee dislocations and unwarranted levels of customer confusion and dissatisfaction.

In addition to the comments relating to MBIS, the NSTAR Companies believe that there is no credible argument to support the termination of exclusive service territories, and to that end, the NSTAR Companies provide quantitative evidence and analytical support for the wisdom of preserving historical policies requiring the exclusivity of distribution franchise territories.

As discussed herein, the public-policy and regulatory standards for introducing a competition in the provision of MBIS and distribution service have not been met, and the Department must, therefore, report to the Legislature that MBIS should not be unbundled and that the exclusivity of service territories should be maintained.

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JOINT COMMENTS OF THE NSTAR COMPANIES IN RESPONSE TO THE NOTICE OF INQUIRY REGARDING COMPETITIVE METERING, BILLING AND INFORMATION SERVICES AND EXCLUSIVITY OF DISTRIBUTION COMPANY FRANCHISES

I. INTRODUCTION

Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (collectively, the "NSTAR Companies") file these comments in response to the Notice of Inquiry (the "NOI") issued by the Department of Telecommunications and Energy (the "Department") on June 12, 2000, regarding metering, billing and information services ("MBIS") and distribution company franchises. As indicated in the NOI, the Department is conducting this investigation pursuant to Section 312 of the Electric Restructuring Act of 1997 (Chapter 164 of the Acts of 1997 or the "Act"), which directs the Department to investigate: (1) whether MBIS, historically provided by distribution companies, should be unbundled and provided on a competitive basis; and (2) whether distribution company service territories should remain exclusive, as required by G.L. c. 164, § 1B (NOI at 1). (1)

The following comments first discuss the important policy objectives of the Legislature and the Department in establishing a competitive electric generation market, and from that example, set forth proposed criteria for evaluating whether distribution services, including MBIS, should be provided on a competitive basis. Second, the comments provide an overview and description of the components of electric distribution service, including MBIS. Third, these comments discuss the application of the proposed evaluation criteria to distribution services, including MBIS, with specific focus on the potential impact of further distribution-system unbundling on consumers, employees and utility companies. Lastly, the comments respond to the specific questions posed by the Department in its NOI.

II. THE BASIS FOR INTRODUCING COMPETITION

In 1997, the Legislature enacted a comprehensive electric-restructuring bill that, among other things, established a market structure necessary to support full and fair competition in electric generation services. The Legislature's efforts in this regard came as a result of its determination that the interests of consumers would best be served by the functional unbundling of generation services from transmission and distribution services, and further, that the benefits of this unbundling would be evidenced by rate reductions, increased technological innovation and efficiency, enhanced service and improved public confidence in the electric utility industry. As a result of the Legislature's action, electric distribution companies in Massachusetts were among the first in the nation to divest their generation facilities, which created significant value for the benefit of Massachusetts electric consumers. Yet, the provisions of the Act also protect consumers, large and small, from a precipitous and disorderly shift to more competitive energy markets by maintaining strong customer protections, as well as ensuring the reliability and quality of service provided by distribution companies.

The Legislature's actions paralleled the Department's determination that the introduction of competition to the electric-generation function, in conjunction with continued regulation of transmission and distribution services, would best enable the Department to achieve its primary goal of reducing costs to customers. Electric Industry Restructuring, D.P.U. 96-100, at 17 (1996). The Department's determination reflected its long-standing policy that economic regulation is necessary only where competitive market forces cannot be relied on to ensure that reliable, high-quality utility service is provided at the lowest cost. See, e.g., Investigation Into Pricing of Electric Generation, D.P.U. 86-36-A at 10.

In this proceeding, the Department seeks comment on whether it would be appropriate to adopt a competitive model for the MBIS elements of the distribution business, as

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it has done for the electric generation function. At the outset of this review, we believe that the Department should recognize two key issues. First, unbundling MBIS presents an entirely different issue from making generation competitive. The separation of distribution from generation was premised on the fact that the two are quite different businesses, and after separation each business would have all the necessary elements to be managed as a stand-alone enterprise. That is, each business (like every other economic enterprise) would have its own products, its own work force, its own customers, and its own billing and revenue functions. Unbundling MBIS, however, presents a very different paradigm.

This is not a case of separating two stand-alone enterprises. In this case, an essential element of one business the distribution business would be removed by legal fiat and transferred to a third party. The extremity of this action can be appreciated simply by reflecting on the fact that while companies are organized to occupy varying parts of the value chain in any industry ranging from a small niche to complete vertical integration in all cases, no matter how big or how small, the enterprise retains the ability to identify and bill its customers, which is a core business function. In this regard, the attempt to unbundle MBIS functions of electric companies is highly unique.

In striving to achieve its goal of reducing costs to customers, the Department has not blindly relied upon the introduction of competitive forces. In fact, when evaluating whether competitive forces may be harnessed to spur cost reductions, the Department has been careful to maintain regulatory controls and oversight where a service or service component continues to exhibit characteristics of a natural monopoly. See D.P.U. 96-100, at 98. The characteristics of a natural monopoly exist where a single firm can meet all of the demand for a set of products at a lower total cost than if the product were produced by more than one firm. In such a circumstance, the per-unit cost of the product declines with increasing output because of the presence of economies of scale and/or scope. (2) Under these conditions, all else being equal, it is more efficient (and less costly) to have one supplier of the product than to have several suppliers competing with each other to provide the product.

The unbundling and deregulation of electric generation services became possible because of technological innovations (such as the development of combined-cycle gas-fired turbines) and industry changes at the wholesale level. These changes focused attention on the fact that the natural monopoly characteristics inherent in the generation function had eroded over time, i.e., economies of scale and scope were reduced or eliminated over time, and therefore, there is no greater efficiency in having just one supplier of the product. Although there may be multi-plant economies of scale for a single provider, these efficiencies are exhausted well before market demand is satisfied. Thus, multiple suppliers of minimum efficient scale may provide the product, which tends to drive costs down as the firms compete to serve the market. In contrast, the Department has found that the local distribution of power to homes and businesses has retained its essential monopoly character and that the construction of duplicate facilities would be expensive, environmentally intrusive and potentially unsafe, and therefore, the Department has consistently stated that it will continue to regulate distribution services. D.P.U. 96-100, at 9.

The efforts of the Legislature and the Department to harness competitive forces are based on the fundamental determination that such action will benefit customers by reducing costs, while at the same time maintaining or enhancing safety, reliability, and consumer protections. Section 1 of the Act; D.P.U. 96-100, at 26. Accordingly, the primary factor that the Department must evaluate in determining whether MBIS should be unbundled, and the exclusivity of service territories maintained, is whether such action will reduce costs for customers (because competition between multiple providers will drive costs down) or is likely to result in unnecessary and inefficient redundancies that will increase costs for customers. Significantly, Section 312 of the Act specifically requires the Department to determine whether the unbundling of MBIS will cause "substantive savings" to accrue to customers and whether such savings can be effected with little or no disruptions to employee

staffing levels. (3)

Moreover, the Department should evaluate relevant non-cost factors, many of which have been identified by the Legislature and the Department as important considerations, in moving to a competitive electric generation market. These non-cost factors are important because they relate directly to quality of service, reliability and customer satisfaction associated with distribution service, as well as the Department's ability to provide meaningful and effective oversight of a vital service in the interests of customers. As discussed below, these non-cost factors include, but are not limited to the following: (1) continued distribution-system reliability and safety (Section 1(i) of the Act); (2) customer satisfaction and confidence in the utility industry (Section 1(g) of the Act); (3) impact of unbundling on the development of a competitive generation market; and (4) the ability of the Department to maintain sufficient and appropriate control and oversight over the quality of service and the integrity of information afforded to customers.

In order to facilitate the Department's analysis of the implications of unbundling MBIS and the creation of non-exclusive distribution service territories, the NSTAR Companies provide data and information relating to the impacts of such unbundling on the cost and non-cost factors set forth above. These data include econometric analyses of industry data as well as specific cost information for the NSTAR Companies.

III. OVERVIEW OF UTILITY DISTRIBUTION SERVICE

Development and Structure of Distribution Service

At the beginning of the 20th century, utility service was carried out by independent companies, generally operating within a single community. Report of the Special Commission on Control and Conduct of Public Utilities, Resolves of 1929, c. 55 (House No. 1200), at 15-16 (1930). These companies were not connected to each other, either physically or legally, and served the local town or city with local management and localized facilities. *Id.* During the first three decades of the 20th century, community-based electric and gas companies consolidated into larger investor-owned entities and holding companies to take advantage of economies and scale and scope. *Id.* at 36-43. These larger, integrated utilities were viewed as natural monopolies providing an essential service that, because of economies of scale, could minimize the cost of service by avoiding the economic inefficiencies and needless cost associated with the investment in redundant facilities. *Id.* 48-49; D.P.U. 95-30, at 6.

Since its establishment by the Massachusetts Legislature in 1919, the Department has been charged with regulating these natural monopolies, and in doing so, must ensure that utility companies fulfill their obligation to provide safe, reliable and least-cost distribution service to all Massachusetts customers. D.P.U. 95-30, at 6. Thus, distribution service has always included not only the physical transmission and distribution of electricity over wires, but also, interrelated core services, such as MBIS, that are necessary to provide power to homes and businesses within the service territory. These services are key to the distribution company's ability to maintain communication with the customer as it provides an essential service that must be made available to all comers, consistent with the distribution company's obligation to serve. Thus, distribution service must be viewed not only with respect to its economic characteristics, i.e., the presence of economies of scale and scope, but also with respect to its reliability, safety, availability and level of customer comfort and satisfaction.

Stepping back from the review of potential costs and benefits of moving toward a competitive framework for MBIS, it should be noted that an integral part of providing any retail service is the direct relationship that exists between the customer and the service provider. Whatever the scope of service being provided, the service provider must be able to measure the customer's consumption of the service, bill for that consumption and respond to customer inquiries about the service. In

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many ways, these functions are core elements of the commercial relationship between a supplier and a customer, without which a supplier cannot adequately meet consumers' expectations and requirements. In that regard, the services provided by a distribution company, such as metering, billing and customer-service systems constitute a critical component of the distribution service provided to customers. The unbundling of MBIS would break this vital link between distribution companies and consumers, which will have a negative impact on the ability of distribution companies to be responsive to customers and to provide them safe and reliable service.

B. Overview and Description of MBIS Components

The interrelated set of services that are currently provided by the NSTAR Companies under the broad category of MBIS include the following: (1) metering services; (2) customer-service activities; (3) billing and payment service; (4) credit and collections; and (5) information services. (4) Metering services include meter reading, meter procurement, turn-ons, turn-offs, installation, testing, maintenance, development of accuracy standards, providing metering data to billing parties and maintaining meter records. Customer services are defined broadly as customer assignment, customer inquiry and account management services provided by the companies in their efforts to sign up new customers, perform account maintenance and resolve billing or service and outage related issues.

Billing and payment are the activities surrounding calculating, printing, mailing and receiving payment for charges due to the distribution company and, where appropriate, for the generation-services supplier. In addition, billing and payment services include duties such as collection of deposits, and verification of low-income qualification and tax-exempt status. In fact, an important conduit for communication with the customer is through the issuance of the customer's bill, which creates a direct link between the distribution company and all customers physically connected to the system, and provides a forum for the dissemination of information relating to a wide-range of public interest and public safety issues.

Credit and collections are not always included within the discussion of MBIS. However, these functions are integrally related to the billing and payment process, the maintenance of customer records, the development of payment billing plans and the issuance of notices provided for in the distribution company terms and conditions. Lastly, information services are those services relied upon to maintain customer payment records, account information, credit history and historical usage data.

Many of these core services are interrelated and represent an integral part of the distribution function. For example, when a new customer is connected to the distribution system, the installation of the meter is the trigger for the initiation of service. The distribution company coordinates with the customer and municipal agencies, such as local wiring inspectors, to ensure proper and timely meter and service installation. The distribution company works to resolve customer-service issues relating to the service connection and fields customer calls regarding the commencement of service, meter installation, the data extracted from the meter and the distribution company's ability to gain access to the meter. Metering data is translated into billing determinants, applied to tariffed rates, billed by the company and paid by customers.

As a result of its communication and interaction with the customer in establishing the service connection, the distribution company is in a position to track and reconstruct all elements of the process for the customer in the event that the customer has questions or complaints regarding the service provided by the distribution company. Where errors occur, customer-service personnel are able to take immediate corrective action. The unbundling of these interrelated functions will inevitably cause customer confusion and dissatisfaction, and undermine the distribution company's ability to communicate with customers, identify and resolve their concerns and ensure that customers are satisfied with the service provided over the distribution system.

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APPLICATION OF EVALUATION CRITERIA TO MBIS

Distribution service involves a number of bundled components that may or may not be feasibly and beneficially provided to customers on an unbundled, competitive basis. As outlined above, the Department should evaluate the unbundling proposal in view of both cost and non-cost factors to determine whether such unbundling is appropriate and consistent with the Department's public policy goal of achieving benefits for customers.

Cost Impacts of Providing MBIS on a Competitive Basis

As described above, the Department has found that the introduction of competition in a regulated market is appropriate where a service or service component no longer retains the characteristics of a natural monopoly. Accordingly, the NSTAR Companies retained Pacific Economics Group ("Pacific"), to analyze the cost structure associated with the provision of MBIS and electric distribution service to determine if natural-monopoly cost characteristics continue to exist for electric distribution services. The results of that analysis are attached to these comments and are entitled "Economies of Scale and Scope in Power Distribution: Implications for Competition Policy," Pacific Economics Group, Mark Newton Lowry, Ph.D, Larry Kaufmann, Ph.D, Don Wyhowski, Ph.D, David Hovde, MS (August 2000) (the "Econometric Study"). (5)

In its analysis, Pacific noted the significant econometric research that had been conducted over a number of years regarding the changing cost structure of electric generation. That research demonstrated that scale economies in electric generation were exhausted at the output levels far below the size of generation markets, and therefore, the natural monopoly characteristics traditionally attributed to electric distribution services were less applicable to the electric-generation sector of the industry (Econometric Study at 25). "The main policy implication is that a restructuring of large regional generation markets to eliminate local utility monopolies will not lead to a significant loss of scale economies" (id.). These findings formed the basis for electric-industry restructuring initiatives, which have led to a reliance on competitive market forces for the pricing of electric generation.

To analyze the cost structure of electric-distribution services, including MBIS, Pacific used FERC Form 1 reported data for major investor-owned electric utilities for the period 1993-1998. Specifically, the Pacific econometric model relies upon data relating to 98 investor-owned electric utilities to assess economies of scale for the distribution of electricity, and 101 investor-owned electric utilities to analyze the cost structure of MBIS. The econometric model takes a very long-term view of the industry structure in that it assumes that all costs are variable, i.e., that a company is able to adjust all cost inputs immediately to meet changes in the level of demand. (6) As discussed below, Pacific's econometric analysis indicates that unrealized economies of scale exist in the local delivery of electricity. This finding is consistent with the idea that this segment of the industry continues to display the characteristics of a natural monopoly.

The study revealed that, for delivery services, distribution companies with approximately one million customers, a 1 percent increase in output would, in the long run, result in an increase in costs of only 0.95 percent. This suggests that the distribution company is able to meet incremental demand in its service territory at a declining incremental costs, i.e., the distribution company will realize scale and scope economies that lower the unit cost of service. Alternatively, were the utility to experience reduced output due to local delivery competition, scale and scope economies would be sacrificed and upward pressure would be placed on the unit cost of service to remaining local delivery customers. This result supports the idea that, unlike electric generation, economies of scale continue to exist in the distribution of electricity and, accordingly, the exclusivity of service territories required by G.L. c. 164, § 1B should be retained.

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The econometric model used to analyze MBIS cost data also found significant economies of scale associated with providing MBIS. Based on the results of the model, Pacific estimates that, over the long term, a 1 percent increase in the number of customers being served will increase the cost of metering and billing by only 0.93 percent. This cost structure indicates that average total costs of MBIS decrease with each customer added to the distribution system, as the fixed costs associated with providing MBIS are spread out over a larger number of billing units. The cost characteristics of providing MBIS are, in NSTAR's view, indicative of the presence of a natural monopoly which, if unbundled and opened to the competitive market, would result in an increase in overall costs for customers.

The Pacific study explains that, in addition to the economies of scale estimated through the econometric model used to analyze MBIS costs, there are also significant economies of scope associated with providing these services in conjunction with the provision of electric distribution service. The economies of scope and scale estimated by Pacific are two types of "productive" efficiencies that are present when electric distribution companies both deliver electricity and provide MBIS. The Econometric Study indicates that the loss of these efficiencies would affect customers since distribution companies and their customers would be unable to capture ongoing economies of scale or scope if MBIS were unbundled and provided to some customers on a competitive basis.

The findings of Pacific confirm that unbundling MBIS and permitting such services to be offered by competitive suppliers would increase the average total cost of MBIS, even over the long term where all costs are theoretically assumed to be variable and potentially avoidable. Thus, if the competitive model is designed to ensure that prices are driven to the economic cost of providing such services, the provision of MBIS on a competitive basis by a number of suppliers would reduce existing efficiencies, put upward pressure on costs and thereby result in price increases for consumers. This result is, of course, at odds with the public-policy and regulatory objectives outlined above, which are designed to ensure that reliable utility services are offered to customers at the lowest cost possible.

In response to the Department's directives, the NSTAR Companies have compiled company-specific 1999 costs incurred in providing MBIS to their customers. In order to analyze the cost impacts of permitting competition for MBIS, it is necessary to consider MBIS-related costs in two ways. The first is the total costs incurred by companies to provide MBIS. A schedule of these costs for the NSTAR Companies, which include both fixed and variable elements, is set forth in Appendix B. (7) These costs are recovered through base rates and reflect customers' total cost responsibility for MBIS provided by electric distribution companies. As discussed below, in addition to evaluating the total costs incurred to provide these services to customers, it will also be necessary for the Department to consider both the avoidable costs and the incremental costs that will be incurred to accommodate such unbundling.

As indicated in Appendix B, the total annual revenue requirement for the NSTAR Companies' associated with MBIS is \$109.4 million. This results in an average cost for MBIS of \$103.57 per customer. In examining the impact that unbundling would have on these MBIS costs, it is necessary to assess a number of variables including the nature of the service provided by the competitive market and the obligations that the electric distribution companies would continue to have in relation to the components of MBIS. For example, the Department would have to consider and determine whether the distribution company should continue to maintain and operate call centers to process customer inquiries or whether such inquiries will be directed solely to competitive MBIS providers. To the extent that the distribution companies maintain responsibility for call-center operations and the handling of customer inquiries, the distribution company will continue to need the infrastructure to support those functions. In addition, any system maintained by the distribution company will need to be designed for compatibility with the systems of competitive MBIS providers in order to allow for the continued processing of critical customer information. To the extent that distribution companies continue to have the responsibility of providing customers with notices and public interest and safety

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information mandated by the Department, the distribution companies will continue to require the capability of maintaining communication with the customers, and have responsibility for the associated costs.

In addition, the NSTAR Companies have made significant investments in automatic meter-reading systems that will need to be maintained and augmented to the extent that distribution companies have the obligation to provide MBIS to customers returning to the system. Where competitive MBIS services are available, this obligation results in greater costs stemming from the installation and removal of meters for customers leaving or returning to utility service. This is because the business processes and transaction costs associated with coordinating such service transitions in a competitive MBIS market will impose additional costs on distribution companies that they do not presently incur. Significantly, each of these issues has an impact on the number of employees the distribution companies will be required to retain, which must be evaluated in the context of existing union collective-bargaining agreements and the concessions that will need to be negotiated in the future to accommodate the unbundling of MBIS.

With the assumption that electric distribution companies will continue to have responsibilities for providing certain customer information services, the NSTAR Companies developed an estimate of the average net avoidable cost associated with the provision of competitive MBIS. The results of that analysis demonstrate that the costs that electric distribution companies can avoid as a result of customers migrating to competitive MBIS providers are small in comparison to the average costs being incurred to provide MBIS to the entire customer base. The NSTAR analysis indicates that of the average cost of providing MBIS of \$103.57, only \$25.42 can be avoided when a customer transfers to a competitive MBIS provider.

In addition to the relatively small amount of costs that are avoidable with the loss of customers to competitive MBIS, there are several categories of additional costs that would need to be incurred by utility companies (and their customers) to accommodate competitive MBIS. These include: (1) upgrading and redesigning information systems and business processes to accommodate and be compatible with competitive MBIS providers; (2) developing new systems and communications architectures; (3) restructuring meter-reading systems; (4) developing billing systems to support multiple customer options; and (5) processing returned meters. As described in Section IV.C, *infra*, the early California experiences under MBIS competition demonstrate that the magnitude of both recurring and non-recurring incremental costs associated with competitive MBIS is substantial. Thus, the reality is that the unbundling of MBIS from distribution service results in few costs avoided by electric distribution companies and would require the initiation of a new category of costs.

Because electric distribution companies would be unable to avoid significant levels of existing costs, the costs that could become stranded as a result of the introduction of competition for these services must be factored into any Department decision to unbundle MBIS from other distribution-related services. In that regard, the Department and the Legislature have each authorized distribution companies to recover net, non-mitigable transition costs. See G.L. c. 164, § 1G(b)(1); Electric Industry Restructuring, D.P.U. 96-100, at 266 (December 30, 1996). Indeed, in D.P.U. 96-100, the Department reaffirmed its finding in D.P.U. 95-30 that:

a structured transition that allows an appropriate measure of stranded cost recovery, rather than risking the abrogation of existing commitments, would be in the public interest, because it would ensure the provision of sound electric services during the transition.

Electric Industry Restructuring, D.P.U. 96-100, at 265, citing Electric Industry Restructuring, D.P.U. 95-30, at 35. This policy is equally applicable in the context of unbundling MBIS. Distribution companies have incurred costs to purchase and maintain MBIS-related facilities and equipment consistent with their obligation to serve, and most of these costs cannot be avoided if MBIS is provided on an unbundled basis by the competitive market. (8)

B. Non-Cost Impacts

In addition to negative cost implications resulting from efficiency losses, unbundling MBIS would cause significant, long-term deterioration in the quality of service and the level of customer comfort and satisfaction with utility-sponsored distribution service. As stated above, the Department needs to consider non-cost factors in establishing the feasibility and desirability of unbundling MBIS, including (1) continued distribution-system reliability and safety; (2) customer satisfaction and confidence in the utility industry; (3) impact of unbundling on the development of a competitive generation market; and (4) the ability of the Department to maintain sufficient and appropriate control and oversight over the quality of service and level of information afforded to customers.

An important consideration in this regard is that distribution companies provide an essential service through a direct physical connection with the customer's home or place of business. However, in addition to providing core delivery services to the customer's home or business, the electric distribution company has a statutory obligation to act as the "supplier of last resort" for standard offer and default service. Consistent with that obligation, the distribution company has a non-dischargeable responsibility to provide cost-effective, safe and reliable service to customers. The distribution company's ability to fulfill this responsibility is dependent on the ongoing communication and contact with customers regarding their service requirements. The unbundling of MBIS would inevitably erode the ability of the distribution company to interact with customers, and therefore, undermine its ability to provide them with effective and responsive service.

Moreover, the provision of distribution services on a bundled, regulated basis ensures that utility companies are able to maintain adequate levels of trained and experienced staff to provide safe and reliable service. Although the avoided costs associated with unbundling MBIS are relatively small, the reductions are largely related to reduced employee levels.⁽⁹⁾ These reductions in work-force levels may have a direct and negative impact on service quality, especially when needed the most, e.g., during service disruptions or storms. For example, utilities presently have some flexibility to assign workers normally devoted to routine matters, such as reading meters, to assist in restoring power. Similarly, customer-service representatives whose time may usually be dedicated to answering questions on billing issues will be available to reply to customer inquiries on service outages. If the distribution company is no longer providing these services, then the distribution company no longer has the flexibility to deploy expertise and resources when required by emergency circumstances.

Customer comfort and satisfaction with the level of service provided by the distribution company would also suffer if MBIS were provided on a competitive basis. Under the current regulatory framework, utility companies are directly accountable for the interrelated services that are necessary to deliver power to customers. The customer has the ability to receive a package of services from the utility on a cost-effective basis, or to switch freely to a competitive energy provider without the confusion and delay of changing meters and/or billing services. More importantly, the customer has clear recourse in the event that there is a service issue and the Department has the authority to sanction a utility where there is a failure to provide safe, reliable and least-cost distribution service or where service quality levels deteriorate.

With the unbundling of MBIS, the Department's ability to provide recourse to the customer may diminish as unregulated entities are permitted to provide these services to customers. For example, the Department routinely requires companies to provide customer notifications in addition to, or as part of, monthly bills. Billing and collection practices are also closely monitored by the Department. Regulated utilities, with clearly articulated service obligations that have historically been subject to regulatory oversight, must be responsive to local regulators. Unregulated entities in the competitive market are not routinely subjected to the same level of regulatory oversight and cannot be expected to be as responsive to Massachusetts

regulators. (10)

Maintaining MBIS within the bundle of services provided by the distribution company will not deprive customers of the opportunity to explore, experiment with and take advantage of, innovative and advanced metering options. For example, customers can use pulse interfaces to existing meters to gain access to additional information and enhanced energy-management systems. In addition, time-of-use meters are available for large customers and have been utilized by many industrial customers for several years. Electric distribution companies have thus been providing greater levels of access to usage data and have cooperated with customers to respond to requests for more sophisticated metering options. The NSTAR Companies will continue to work with customers to ensure that the metering needs of consumers are met.

Lastly, it is sometimes argued that the development of competitive generation services would somehow be enhanced by competitive MBIS. Again, there is no evidence to support this claim. The implementation of Electronic Data Interfaces and data-exchange protocols by the distribution companies through collaborative efforts has ensured that systems are available to support competitive marketers of generation services. Given the lack of grass-roots customer demand for competitive MBIS, and the high wholesale prices for competitive generation in Massachusetts, there is no evidence that the development of competitive generation markets would be enhanced by the introduction of competitive MBIS. Moreover, maintaining MBIS within the bundle of distribution services removes an impediment to customer choice, because customers are free to switch suppliers without the delay or disruption that may be caused in changing meters or billing services.

C. The Experience in California with Competitive MBIS Verifies the Massachusetts Analysis.

The early experience in California verifies the fact that moving to competitive MBIS does not meet regulatory and public-policy standards for deregulating a utility service. A study by the Pacific Economics Group concluded that the costs of competitive MBIS in California are "real and growing". "Third Party Metering, Billing and Information Services: The Experience in California So Far", Lawrence Kaufmann, Ph.D., Pacific Economics Group (April 21, 1999) (the "California Study"). (11) The California Study noted that for billing services, there are significant recurring costs associated with processing additional transactions with new competitive market entities. As such, the California Study found that a good share of the benefits of competition in producing lower billing prices may be "eaten up" in the costs of administering activities in the new competitive environment.

The California Study also estimated that California's distribution companies will incur additional non-recurring costs associated with implementing third-party MBIS of approximately \$37.6 million over the 1997-2001 period (id. at 5). Further, among the most severe problems encountered in California in implementing competitive MBIS were an inability for market participants to reach agreement on meter communication standards and difficulties experienced by distribution companies in recovering costs relating to competitive MBIS (id. at 42-52). Accordingly, the Department should recognize the significant implementation problems occurring in California regarding competitive MBIS and reject a similar exercise in the Commonwealth.

The early experience in California with competitive MBIS also underscores the corresponding lack of benefits. The proponents of competitive MBIS in California promised a wealth of benefits; however, when the California Study was performed, none of them had materialized. Among the purported benefits of competitive MBIS were: customer demand for real-time metering; lowering prices for metering services; technological innovation and new meter-related services; customer convenience and new value-added services; and lower billing prices (id. at 19-26). However, the California Study concluded that these claimed benefits of competitive MBIS remained "speculative and unsubstantiated" (id. at 54).

V. EXCLUSIVITY OF DISTRIBUTION SERVICE TERRITORIES

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As with the provision of MBIS, maintaining exclusive service territories for distribution service also meets the regulatory and public-policy standards relating to cost, service quality and reliability. An integral component of the provision of electricity in the Commonwealth has been the recognition by government of the public utility's exclusive retail franchise, to be exercised on behalf of the public good, free from retail competition. See *Commonwealth Electric Company v. Department of Public Utilities*, 397 Mass. 361, 368-369, 491 N.E.2d 1035, 1039 (1986), cert. denied, 481 U.S. 1036 (1986). The exclusive distribution franchise of electric utilities is recognized by various provisions of the General Laws (see, e.g., G.L. c. 164, §§ 21, 30, 70-76C, and 86-91), and decisions of the Massachusetts Supreme Judicial Court (the "Court"). (12)

When addressing this subject, the Court has described the interdependence of public utility monopoly status, franchise rights, and the duty to exercise those rights on behalf of the public:

A public service or quasi public corporation [public utility] is one private in its ownership but having an appropriate franchise from the state to provide for a necessity or convenience of the general public incapable of being furnished through the ordinary channels of private competitive business and dependent for its exercise upon eminent domain or some other agency of government.

Haverhill, 215 Mass. at 398. The nature of this franchise is the "right to manufacture and supply [electricity] for a particular locality and to exercise special rights and privileges in the streets and elsewhere which are essential to the proper performance of its public duty and the gain of its private emoluments [i.e., profits] and without which it could not exist successfully." *Haverhill*, 215 Mass. at 399; see also *Boston Real Estate Board v. Department of Public Utilities*, 334 Mass. 488, 491, 136 N.E.2d 243 (1928); *Roberto v. Commissioners of Department of Public Utilities*, 262 Mass. 583, 160 N.E. 321 (1928); *Town of Truro v. Department of Public Utilities*, 365 Mass. 407, 312 N.E.2d 566 (1974). In fact, a public utility cannot relieve itself of its franchise duties to the public so long as it retains its charter. *Haverhill*, 215 Mass. at 397-397.

The wisdom of the historical policies requiring the exclusivity of franchises and service territories is supported quantitatively by the cost analysis performed by Pacific. This econometric analysis demonstrates the intuitively obvious fact that there exist economies of scale in providing distribution service which makes such service a natural monopoly. Although it is self-evident that the duplication of distribution facilities will result in higher costs and intractable complications relating to the operation of the bulk power system, the quantitative evidence provided in Appendix A provides the analytical support for the regulatory policy that has been in place for a century. (13)

Further, exclusive service territories play a significant role in ensuring system reliability and service quality. In exchange for protection from competition through the franchise, distribution companies assume certain general obligations, including: (1) an obligation to serve within their service territory all who apply for service and are willing to pay for such service; (2) an obligation to provide safe, reliable and adequate power (i.e., utilities must be prepared to provide instantaneous service on demand); (3) an obligation to serve all tariffed customers within a specific class on equal terms; and (4) an obligation to provide "just and reasonable" prices. See, e.g., Charles F. Phillips, Jr., *The Regulation of Public Utilities*, (Public Utilities Reports, Inc., Arlington, Va., 1988), pp. 109-111. See *Weld*, 197 Mass. at 396-397; *Holyoke Water Power Company v. City of Holyoke*, 349 Mass. 442, 208 N.E.2d 801 (1965).

The obligation to serve has provided customers historically with the security that electricity will be available upon demand in a safe manner. This continued obligation to provide universal service to customers is threatened if distribution company service territories are not exclusive. If competitive distribution companies were allowed to serve in traditionally exclusive territories, regulated distribution

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companies will be required to cede their rights to serve customers within their service territory to unregulated companies that are under no obligation to provide universal service. Accordingly, if service territories are open to unregulated distribution companies, the Department's ability to enforce an obligation to serve on a competitive distribution provider would be seriously impeded, if not totally eliminated. (14)

Accordingly, the Department should maintain exclusive service territories for distribution companies as provided in the Act and supported by over 100 years of experience in the Commonwealth. The Legislature explicitly recognized these franchise rights and the benefits of exclusive service territories in the Act. G.L. c. 164, §1B(a) mandates that the exclusive service territories for each electric company be based on those service territories actually served on July 1, 1997, following municipal boundaries to the extent possible. Since the passage of the Act in 1997, the advent of competitive generation has not had any impact on the benefits provided by exclusive distribution service territories. Therefore, the Department should not propose any change to the legislative provisions relating to the exclusivity of service territories for each distribution company as set forth in G.L. c. 164, § 1B(a).

VI. CONCLUSION

Sound public and regulatory policy in Massachusetts favors the discipline of competitive markets to ensure that services are provided to consumers at the lowest possible prices, consistent with reliability and high service quality. Where the structure of a market is such that competitive forces are unable to achieve that result, regulated monopolies serve as a surrogate to ensure that customers receive cost-effective, safe and reliable service. It has been recognized throughout the development of the electricity industry that economies of scale and scope exist for services associated with the distribution of electricity. The service obligation imposed upon regulated utilities has enabled them to avoid inefficient duplication of equipment and services and to leverage their economies of scale and scope for the benefit of customers.

The NSTAR Companies have supplied a quantitative analysis that serves as the empirical basis for continued exclusivity of utility franchise territories and the MBIS functions: i.e., these functions continue to exhibit the characteristics of a natural monopoly, and therefore, are more efficiently provided by the utility than multiple competing suppliers. The existence of natural monopolies for the delivery of utility services means that the introduction of competition will not result in the "substantive savings" contemplated by Section 312 of the Act, and could significantly increase costs, which would ultimately be borne by consumers.

The negative impact of unbundled MBIS on non-cost factors is equally significant. The distribution company's ability to fulfill its service obligation as "supplier of last resort" and to provide cost-effective, safe and reliable service to customers is largely dependent upon the ongoing communication and personal contact that a distribution company has with customers regarding their service requirements. As discussed herein, the unbundling of MBIS would inevitably erode the interaction between the utility and its customers and undermine the utility's ability to provide customers with effective and responsive service. Most importantly, in the absence of clear cost benefits and continued quality of service, the unbundling of MBIS can serve only to cause employee displacement and unwarranted levels of customer confusion and dissatisfaction.

In contrast to the findings of the Department and the Legislature that the electric generation market can be competitive (Section 1 (f) and (g) of the Act), no such determination has been suggested for delivery services and MBIS. Moreover, before the passage of the Act in November 1997, the Department recognized that MBIS should not be subject to competition during the transition to a competitive generation market. See Electric Industry Restructuring, D.P.U. 96-100, at 105 (December 30, 1996). The Department also stated in that order that distribution company service territories should be left intact in order to avoid customer confusion. In D.P.U.

96-100, the Department found that:

Maintaining the current monopoly franchise service territories for distribution is in the public interest at least during the transition to competitive markets. Whatever distribution franchise currently exists in each service territory, including the rights and responsibilities which define those franchises, will be maintained for as long as is necessary to accomplish our goal of an orderly transition to competitive markets.

D. P. U. 96-100, at 98 (December 30, 1996).

Ultimately, the Legislature supported in the Act the Department's findings in D.P.U. 96-100. The Act mandated certain unbundling of services, required the explicit establishment of exclusive service territories and asked the Department and the Division of Energy Resources to delay investigating MBIS competition until January 1, 2000. Further, the Legislature recognized that the costs of unbundling a regulated industry are profound, including loss of jobs and the creation of stranded costs, and prohibited the Department from implementing competitive MBIS absent an act of the Legislature. This moratorium by the Legislature and the Department on the introduction of competitive MBIS was designed to ensure that the costs and benefits of competitive MBIS were clearly identified prior to its implementation in the Commonwealth. It is clear that termination of exclusive service territories and providing MBIS through competition do not meet statutory, public-policy and regulatory standards for the introduction of competition. The Department should so report to the Legislature.

VII. RESPONSES TO DEPARTMENT QUESTIONS

Question 1

What are the costs and benefits that competitive MBIS would provide to consumers of electricity, and to other entities that provide services in the electric industries? Benefits should include, but not be limited to, potential cost savings, the enhancement of available energy- and non-energy-related services, and the extent to which the successful development of the competitive market for generation requires the introduction of competitive MBIS. Please also discuss why these same benefits could not be achieved within the current monopoly structure. Comments on the costs of competitive MBIS should include, but not be limited to, impacts on utility employee staffing and the effect that such competition would have on a distribution company's ability to meet the needs of its customers on an ongoing basis.

As described above, the benefits of competitive MBIS are speculative, at best, and have not been quantified in any reliable manner. Conversely, the costs of competitive MBIS are large and some have been quantified. The development of competitive MBIS is not needed to support competitive generation, since existing processes have been implemented to support competitive generation. Moreover, the development of competitive MBIS would adversely affect utility staffing levels and jeopardize the utility's ability to maintain communication with the customer to ensure customer satisfaction, as well as the safe and reliable delivery of electricity.

Question 2

Please describe all services that are currently provided by distribution companies under the broad category of metering, billing, and information systems? Can or should all these services be provided competitively? If not, please identify services that cannot or should not be provided competitively and explain why that is so.

Services that are currently provided by distribution companies under the broad category of metering, billing and information systems include the following:

Metering Services

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Customer Services

Billing and Payment

Credit and Collections

Information Services

Metering Services

Metering services include metering services such as meter reading, meter procurement, turn-on, turn-offs, installation, testing, maintenance, development of standards, providing metering data to billing parties, and maintaining meter records.

Metering services traditionally taken advantage of "density" economies (i.e., the cost efficiencies of reading meters all customers in a geographical area) to provide low-cost solutions to metering and meter reading. During the 1997 hearings for retail access in Massachusetts, it was generally agreed by all parties that sophisticated metering was not required for retail access to occur. By providing extended options to third parties for pulse outputs and for the installation of their own metering, distribution companies have provided a mechanism for meeting market needs. This can capture any possible savings derived from enhanced metering and data-collection alternatives. In addition, the distribution companies entered into discussions with customers regarding replacement of existing metering equipment with premium metering, where appropriate. To date, there have been few customer requests to consider meter upgrades or replacements. As metering technologies continue to emerge, and uniform business practices develop, diligence in maintaining open architecture in distribution-company designs will afford all parties the ability to gain access to the data available from the meter, without the additional costs or confusion created by multiple parties operating with different technologies and standards being responsible for providing these services.

Customer Services

Customer Services are defined broadly as services such as customer assignment, customer inquiry, and account management services provided by the distribution companies in their efforts to sign up new customers, perform account maintenance and resolve billing or service and outage related issues.

Utility companies have traditionally leveraged their call centers and customer service staff to perform multiple functions, including responding to outages, billing issues, service requests and to perform credit and collection activities. The distribution company is positioned as a single focal point for the customer to call. Separating these duties through unbundling will serve to introduce confusion to the customers. This will create unnecessary uncertainty for Massachusetts customers during a time when there is already much anxiety surrounding energy issues. In addition, as the market develops and customers switch suppliers, maintaining the distribution company as the provider of call center and service arrangement functions will assure that customers are notified of all their options under retail choice in an unbiased manner. Further developments in the area of performance-based rates will continue to drive distribution company customer service performance toward higher service levels while at the same time increasing efficiencies.

Billing and Payment

Billing and payment are the activities relating to calculating, printing, mailing and receiving payment for charges due to the distribution company and, where appropriate, for the supplier. In addition, the activities include duties such as collection of deposits, and maintenance of records of qualification for programs requiring low-income and tax-exempt status. Through the issue of its bill, the

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distribution company has traditionally provided a mechanism to provide messages to the consumer on a wide range of issues on behalf of the Department, or other consumer advocacy agencies.

Customer surveys indicate that customers want simplicity and convenience in their bill. Regulations already in place allow for generation-service suppliers to bill directly for those services provided by them. There are no additional gains to be achieved that would warrant the unbundling of these services, that would outweigh the benefits and assurances provided by the direct mailing of a bill by the distribution company. The economies of scale and scope, and reduced costs afforded by bulk mailing should also be considered. Finally, the close tie between the billing and credit and collections activities results in benefits to customers when they are kept together and provided on a bundled basis by regulated distribution companies.

Credit and Collections

Credit and collections are not always included within the discussion of MBIS. However, this function is closely related to the billing and payment process, maintaining customer records, as well as development of payment billing plans and issuing of notices under the distribution company terms and conditions.

These activities are often some of the most important activities performed by utilities. Prudent business practice needs to be combined with a sensitive approach to assure that receivables are managed properly and in accordance with the Department's regulations. These activities closely tie to billing and payment functions and with the management of customer records. In addition, these activities can sometimes result in a field order to shut off service for non-payment. These activities should remain bundled in the distribution company to assure that customers are treated fairly and consistently across franchise areas, and are offered all the services that retail choice has to offer.

Information Services

Information services are those services provided to maintain customer records, account premise information, credit history and other customer and premise-specific historical data.

Distribution companies are best positioned to maintain these customer records. The distribution companies have acted as the custodian for the records for many years. Recently, through the Electronic Business Transaction groups, transactions have been created to make certain customer data available to third parties. It is through central management and collaborative development of data interchange that consistent processes have and will continue to be developed. It is necessary for the custodial responsibility provided by the distribution companies to be maintained as bundled services. As stated previously, distribution companies as neutral participants in the marketplace will be best positioned to implement appropriate safeguards to ensure customer data is not provided to any supplier without proper customer authorization. In addition, the distribution company will be the consistent participant as customers move, and as suppliers are replaced.

Question 3

G.L. c. 164, § 1B(a) provides that distribution company service territories shall be based on the serviced territories actually serviced on July 1, 1997, and following, to the extent possible, municipal boundaries. Please discuss whether this provision of G.L. c. 164 should be amended or repealed in whole or in part. As part of this response, commenters are encouraged to refer and cite to relevant statutory interpretations or Department decisions.

The Department should not propose any change to the legislative provisions relating to the exclusivity of service territories for each distribution company as set forth in G.L. c. 164, § 1B(a). Please see the NSTAR Companies' comments in Section V,

supra.

Question 4

G.L. c. 164, § 1B(a) provides distribution companies with the exclusive obligation to provide distribution service to all retail customers within their respective service territories unless the written consent of the distribution company has been obtained and filed with the Department and the clerk of the municipality so affected. Please discuss whether this provision of G.L. c. 164 should be amended or repealed in whole or in part.

The Department should not propose any change to this legislative provision. Please see Section V, supra.

Question 5

G.L. c. 164, § 1B(c) prohibits Department-regulated electric companies or their affiliates from using the distribution system of another electric company or make direct or indirect sales to end-use customers in another electric company's service territory unless (1) the Department has approved a restructuring plan for the supplying electric company providing for comparable direct access to end-use customers within its own distribution service territory, or (2) the supplying electric company has entered into an agreement, on or before January 1, 1997, for direct access to an end-use customer located on the border of its service territory. Please discuss whether this provision of G.L. c. 164 should be amended or repealed in whole or in part.

G.L. c. 164, § 1B(c) appears to be designed to ensure that any electric company or its affiliate be prohibited from marketing generation services in another service territory unless its restructuring plan (providing for retail choice) has been approved by the Department. Since restructuring plans have been approved for all Massachusetts electric companies, the issue is moot and no further legislative action with regard to this section (either amendment or repeal) is necessary.

Question 6

To what extent, if any, does the Restructuring Act require or allow the Department to consider whether MBIS should be offered competitively within the natural gas industry?

Section 312 authorizes the Department to consider competitive MBIS for "distribution companies," which are defined in G.L. c. 164, § 1 as companies: "engaging in the distribution of electricity..." (emphasis added). Although Section 312 requires the Department to seek input from the gas industry, there is nothing in Section 312 that directs the Department to consider competitive MBIS for gas companies.

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1. 1 Specifically, section 312 of Chapter 164 of the Acts of 1997 reads, in part:

Notwithstanding any general or special law, rule, or regulation to the contrary, no sooner than January 1, 2000, the department of telecommunications and energy, in conjunction with the division of energy resources, is hereby authorized and directed to commence an investigation and study relative to the manner in which metering, meter maintenance and testing, customer billing, and information services have been provided by distribution companies since March 1, 1998, pursuant to the provisions of chapter 164 of the General Laws, to analyze and determine whether such services should be unbundled and provided through a competitive market, whether in doing so any substantive savings accrues to consumers, and whether such substantive savings can be effected with little, if no, disruptions to employee staffing levels of those distribution companies presently conducting those activities. Said study shall also

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include an investigation and review of the creation of exclusive distribution service territories, pursuant to section 1B of said chapter 164, to determine if such exclusivity shall be terminated or altered in any manner.

2. 1 See Joskow, Paul L. and Schmalensee, Richard, Markets for Power, Cambridge, Massachusetts: The MIT Press, 1985, at 29-30; Kahn Alfred E., The Economics of Regulation: Principles and Institutions, Cambridge, Massachusetts: The MIT Press, 1988, at Vol. II, at 113-126.

3. 2 Although not specifically defined in the Act, the legislative requirement that substantive savings accrue to customers necessarily implies that the unbundling of MBIS should result in the provision of service in a more efficient and cost-effective manner, and that such efficiencies would be reflected in lower total costs to customers.

4. 3 The elements of these services are described in more detail in the NSTAR Companies' response to Question 2, below.

5. 4 The report is attached hereto as Appendix A.

6. 5 As described below, an actual company of a given size would be unable to reduce many of its costs over the short term if demand were reduced. For the NSTAR Companies, the presence of fixed costs and restrictions in collective-bargaining agreements represent some of the significant practical limitations on the level of costs that would be avoided if customers migrated to competitive MBIS options.

7. 6 In the NOI, the Department directed all electric distribution companies to file "detailed information relative to their costs of providing MBIS, including, but not limited to, capital costs, depreciation, operating expenses, and taxes." As requested, the NSTAR Companies have compiled their financial costs of providing MBIS for electric operations. See Appendix B, attached hereto, which contains account-specific information relating to MBIS costs that have been incurred.

8. 7 The unavoidable stranded cost associated with MBIS is significantly different from those associated with the unbundling of the generation function. Electric utilities are no longer obligated to provide generation services except through standard-offer service (which expires in a few years) and providing customers with access to the competitive market through default service. Essentially electric utilities are no longer in the generation business, and the stranded costs that are collected in the transition charge relate only to obligations that were incurred before retail competition in generation. There is no suggestion that distribution companies could be relieved of a continuing obligation to offer MBIS services to customers for distribution (and generation) services. Thus, even if MBIS were permitted to be provided on a competitive basis, MBIS-related costs would continue to be incurred by distribution companies and strandable costs would continue to be accumulated.

9. 8 The NSTAR Companies have included as Appendix C, a schedule showing the number of their employees associated with MBIS. It is impossible to estimate how many of these employees would be dislocated if MBIS were unbundled without stating the assumptions regarding the distribution companies' ongoing obligations as the "supplier of last resort" and the level of customer migration to competitive MBIS.

10. 9 Moreover, the large number of potential competitors will make it impossible for the Department to perform its obligations effectively and with a minimum of administrative burden.

11. 10 A copy of this study is attached hereto as Appendix D. The California Study was based on an analysis of more than one year's experience in California and is being updated to include more recent cost data and a discussion of the difficulties encountered during implementation. The NSTAR Companies intend to file the updated report with the Department in their Reply Comments.

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12. 11 G.L. c. 164, § 21, prohibits any regulated utility from transferring its franchise or otherwise attempting to relieve itself from its duty to exercise its franchise for the public good without legislative authority. Attorney General *ex rel. Corporation Com'r v Haverhill Gaslight Co.*, 215 Mass. 394 (1913), at 399; *Weld v. Board of Gas & Electric Light Commissioners*, 197 Mass. 556 (1908), at 556-558. G.L. c. 164, § 30, directs that Department authority is necessary to allow a gas or electric company to expand their service franchises into other towns, subject to the rights of existing franchises in such towns. G.L. c. 164, §§ 70 through 76C deal with the rights of gas or electric companies, subject to Department mandate to ensure the public convenience and necessity, to open public streets, lay mains and wires, construct transmission lines, and exercise eminent domain as part of their franchise rights to meet their required provision of service. See, generally, *Comiskey v. Lynn*, 226 Mass. 210, 115 N.E. 312 (1917). G.L. c. 164, §§ 86 through 91, deal generally with the need for the consent of municipalities or towns to the entry of another utility company into an existing service territory. See, e.g., *Boston Real Estate Board v. Department of Public Utilities*, 334 Mass. 477, 136 N.E. 2d 243 (1956).

13. 12 In addition, under the Act, transition charges are non-bypassable at the distribution level to ensure that all customers pay their fair share of transition costs. See G.L. c. 164, §1G(b). Without non-bypassable transition cost charges and exclusive service territories, distribution companies would not be able to recover fully their transition costs. This clearly would violate the Act's provisions that allow distribution companies to receive the entirety of their Department-approved net, non-mitigable transition costs and would raise serious constitutional issues.

14. 13 Further, system reliability is integrally related to the performance of the electricity grid through ISO New England, Inc. ("ISO-New England"). It is impossible to know how multiple distribution systems in the same area provided by competitive suppliers would affect ISO-New England's ability to maintain system reliability.